



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 56

P537/25

OPINION OF LORD LAKE

in Petition of

DR MORAG HANNAN

Petitioner

for

Judicial Review

**Petitioner: Dean of Faculty KC et Welsh; Drummond Miller LLP**  
**Respondent: Reid KC et Breen; Shepherd & Wedderburn LLP**

11 June 2026

**Introduction**

[1] On 15 April 2025 the respondent's planning committee granted conditional planning permission for the construction and operation of a 40 MW battery energy storage facility together with associated infrastructure, substation, security fencing, CCTV, security lighting and landscaping. The petitioner was a notifiable neighbour for the application and had submitted an objection to it. In these proceedings, she seeks to have the decision to grant permission reduced on the basis that a councillor, Councillor Edlin, who was a member of the committee had not attended the meeting where the decision was made and had therefore not voted on the application. It is claimed that these were both the result of a

discussion he had had with the respondent's monitoring officer, Mr Mahon. It is averred that what Mr Mahon said to Councillor Edlin amounted to a misdirection, amounted to a failure to meet the standard of natural justice, was a threat of professional disciplinary action and sanction, was partial in that it did not advise him of his options and had the effect that "Councillor Edlin was wrongfully prevented from participating in the meeting".

## **Background**

[2] By way of factual background, the application is for planning permission to construct what would be generally known as a "battery farm" close to Eaglesham. An earlier application made in 2024 was refused by the respondent and was subject of an appeal to the Scottish Ministers. That appeal was dismissed in May 2025. While the appeal was pending, a second application was presented and it is that application that gives rise to these proceedings. In the second application modifications had been made to the proposals in the earlier application. Both applications were the subject of a large number of objections.

[3] On the morning of the day on which the application was to be considered by the respondent's planning committee, Mr Mahon was made aware of the intention of a councillor to object to Councillor Edlin participating in the discussions and the vote. The basis for this intention was an allegation that at a meeting of the Mearns East Community Council on 1 April 2025 he had made comments about the application which included him using the term "eyesore" in relation to the proposals. I should note at the outset that Councillor Edlin denies having used that word in relation to the second application.

[4] At this point, it is useful to examine briefly the regulatory background. Use of the term "eyesore" in relation to the proposals in the application could raise issues under the Councillors' Code. Among other objectives, the Ethical Standards in Public Life etc

(Scotland) Act 2000 seeks to ensure the maintenance of high standards of conduct by councillors and other persons holding public appointments. To that end, it requires the Scottish Ministers to issue a code of conduct for councillors - The Councillors' Code - and sets out a mechanism by which it can be enforced. The version of the Code which was current during the events referred to in the petition was the one published in 2021.

[5] Enforcement of the Code is the responsibility of the Standards Commission for Scotland and the Commissioner for Ethical Standards in Public Life in Scotland. The Commissioner is under a duty imposed in the 2000 Act "to investigate and report to the Commission on cases in which a councillor ... has, might have or is alleged to have contravened the [Code]" (section 9). Despite the apparently mandatory provisions of that section, it is for the Commissioner to decide whether to report the outcome of an investigation to the Commission. If a report is made to the Commission, it has a power to hold a hearing at which it will consider the alleged contravention and, if they find that the Code has been breached, they must impose a sanction. The list of sanctions available includes censuring the councillor, suspending the councillor for a period or disqualifying the councillor.

[6] The Code is drafted in the first person and the elements most relevant to the facts of this challenge are as follows:

"7.4 In dealing with [quasi-judicial or regulatory] applications,

I WILL:

- (a) throughout my involvement with the entire application process act fairly and be seen to act fairly;
- (b) declare interests where required in terms of Section 5 of this Code and leave the meeting until the matter has been determined;
- (c) deal fairly and impartially with all parties involved in the application;

- (d) tell those who may be seeking to influence me out with the proper decision-making process that I will not formulate an opinion on any particular application until all information is available to all decision-makers and has been duly considered at the relevant meeting;
- (e) take into account professional advice given to me by council employees; and
- (f) seek advice from the relevant council employee if I am in doubt as to any material or relevant considerations.

7.5 In dealing with such applications,

I WILL NOT:

- (a) pre-judge or demonstrate bias or be seen to pre-judge or demonstrate bias;
- (b) indicate or imply support for or opposition to an application nor indicate my voting intention prior to the appropriate meeting where the application will be considered;
- (c) in advance of the decision-making meeting, attempt to influence employees to adopt a particular position as that would imply that I am prejudiced in my decision-making;
- (d) lobby other councillors who may be dealing with the application;
- (e) express any view on the application before the appropriate meeting where the application will be considered. If I do so I will not participate in any aspect of the decision-making nor vote on the application;
- (f) formulate my conclusions on an application until all available information is to hand and has been duly considered by me at the meeting where the application will be considered;
- (g) express any indicative or provisional views in the course of my involvement in any aspect of the application; or
- (h) otherwise act improperly or do anything which could reasonably create a perception that I have acted improperly."

Paragraph 7.5 (e), (f) and (g) are of particular relevance to this application.

**Telephone calls from Mr Mahon to Councillor Edlin**

[7] As to the factual background, when making submissions, both parties relied on affidavits from Councillor Edlin which had been lodged for the background to and contents of telephone calls that Mr Mahon made to him on the day of the meeting intended to consider the second application. Councillor Edlin accepts that he had attended a meeting of Mearns East Community Council on 1 April 2025. His position is that this was nothing to do with the second application but that during the meeting the first application was raised and there was some discussion of it. In relation to the telephone calls to him, he states that on the day on which the second application was to be considered in the afternoon, Mr Mahon called him in the morning and said he was giving him notice that the council had received a complaint from Councillor Ireland. The complaint was that he had already reached a decision about the second application and was not impartial. Councillor Edlin states that Mr Mahon told him he was passing on this information so that he could consider the matter in advance of the hearing rather than finding out about it only at the meeting. Councillor Edlin recognises that Mr Mahon did not express any view on the factual position or whether the complaint was justified.

[8] In his affidavit Councillor Edlin says that there was a further call which he thinks was 15-20 minutes later. He states in it that Mr Mahon said that he had spoken to someone who had listened to the tape of the community council meeting and that Councillor Edlin had used the word "eyesore". Councillor Edlin states that in the call, Mr Mahon said the following:

- He had not listened to the tape but said that he had spoken to someone who had and that Councillor Edlin had used the word eyesore.

- Councillor Edlin had spoken quite strongly at the meeting and people might argue that he had a pre-determined position.
- He should consider what he wanted to do.
- In response to a question from Councillor Edlin about the consequences of this, Mr Mahon said that a complaint might be made to the Standards Commission. If it was upheld, penalties ranging from a warning to suspension and on to disqualification might be imposed.
- In relation to proceedings before the Commission, Mr Mahon said that “the bar is very low” to establish breach of the Code.

Councillor Edlin states that he told Mr Mahon that he thought he would not attend the meeting to which Mr Mahon said he thought it was the correct decision. Although Councillor Edlin says that it was during this call that he decided he would not attend the meeting, he also states that he spoke to other councillors and canvassed their views on the position. He says that he went for lunch with a councillor friend and discussed it with him also. These interactions were prior to the council meeting. His affidavit acknowledges that it was as a result of the exercise of his own judgment that he did not attend the council meeting but states that he made his decision based on what Mr Mahon had told him as summarised above.

[9] In the petitioner’s averments, she accepts that the advice Councillor Edlin was given by Mr Mahon was not wrong but claims that it was incomplete. Councillor Edlin says that he exercised his judgment on the basis of the advice he was given and that had the advice had been complete, he would have attended the meeting. Councillor Edlin points out that at no point did Mr Mahon ever indicate that it was open to him to attend the meeting and

seek a postponement. He says that he did not know this was an option and had never seen it happen in all his time as a councillor.

[10] While Councillor Edlin does not dispute that he used the word “eyesore” at the community council meeting, he contends that he used it only about the first development in respect of which the council decision had already been made. This is disputed by the respondent. If this was a matter on which the petition turned, the issue of the context in which the comment was made could not be determined solely on the basis of affidavits and it would be necessary to hear evidence. In the circumstances, however, this issue is not material for the reasons I consider below.

### **Authorities and analysis**

[11] At the hearing before me, counsel for the petitioner referred to *Kanda v Government of Malaya* [1962] AC 322, *R (Mansell) v Tonbridge and Malling Borough Council* [2019] PTSR 1452, *R (Berky) v Newport City Council* [2012] 2 CMLR 44, *R (Lewis) v Redcar and Cleveland Borough Council* [2009] 1 WLR 83, *Hartlands (NI) Ltd’s Application for Judicial Review* [2021] NIQB 94, and *X, Petitioner* 2022 SLT 157 as authorities which supported her position. In addition, counsel for the respondent relied on *Neath Port Talbot County Borough Council v Ware* [2007] EWCA Civ 1359 and *R (on the application of The Spitalfields Historic Building Trust) v London Borough of Tower Hamlets and another* [2025] UKSC 11, [2025] PTSR 700.

[12] *Neath Port Talbot County Borough Council* is the case that is the most similar to the present and it is the appropriate place to start. It concerned a challenge to a decision of a local authority in relation to planning permission in respect of which four councillors, who had not attended a site visit, did not vote on the application on the basis of advice they were given by council officers. The Court of Appeal determined that the advice that was given

was to make the councillors aware of the difficulties that might arise for them in making a decision in a situation in which they had not attended the site visit. They were not told that they could not participate in the meeting and were not told that they were disqualified from voting. Instead, the advice having been given, the councillors were left to make their own decisions as to whether or not to attend the meeting and to make their own judgment about voting on the item in question. The court placed emphasis on the fact that the councillors were advised that it was for them to make their own decisions. It was noted that none of the advice that was given to the councillors was wrong or amounted to an immaterial consideration giving rise to procedural irregularity or to unlawfulness. The challenge was unsuccessful.

[13] The decision in *Neath Port Talbot* was considered in *Hartlands*, a decision of the High Court of Justice in Northern Ireland. Scofield J noted that the Court of Appeal had upheld the decision before them on the basis that the councillors had been left to make their own decisions and to exercise their own judgment and that there had been no direction or pressure as to how they voted. By contrast, in the case before him, he concluded that there had been such pressure and therefore the decision was vitiated. He also considered the decision of the Court of Appeal in *R v Flintshire County Council, ex parte Armstrong-Braun* [2001] EWCA Civ 345; [2001] 3 LGR 34. It concerned different circumstances. The local authority there had adopted a new standing order which prohibited any elected member putting business before the council unless it was seconded by another council member. Previously, a single member could move a motion for discussion. The court concluded that the change went to the heart of the democratic process in that it prevented an elected member who was not a member of a party or group from

raising matters of concern for his constituents if he could not obtain the support of another councillor. The change was unlawful.

[14] The issue in *Hartlands* is quite different from the one raised here and in *Neath Port Talbot*. It concerned a rule which had the effect of excluding a councillor from participation from council business without there being any question of the councillor in question taking the decision as to whether or not to participate. The crux of the decision in *Neath Port Talbot*, on the other hand, was that, having been given advice which was correct, the *councillors* took the decision not to participate and that was why the decision should be upheld. On the facts of the case before them, the Court of Appeal found there was no procedural irregularity vitiating the consents. On the very similar facts of this case, I have reached the same conclusion.

[15] The decision in *R (Lewis)* also raises issues that are different from those in the present case. It concerned a claim that a council decision could be invalidated because members of the council committee in question had already made their decision prior to the meeting at which the matter was to be voted on or had closed minds when they were to consider the application. It was said that there had been an appearance of bias or predetermination. In rejecting this submission, the Court of Appeal noted that it was necessary to take account of the realities of decision making by elected members of a council and that they are not in a judicial or quasi-judicial position. The court recognised that it was to be expected that councillors would have expressed views on issues that they would be required to decide. They adopted what has been said earlier by Woolf J in *R v Amber Valley DC Ex p Jackson* [1985] 1 WLR 298 that a councillor would not be disqualified from participation in a decision merely because of a predisposition to vote in a particular way but that the council had to consider the application on its merits and a decision might be challenged if the

decision has been taken with closed minds (para [69] to [71]). The decision addressed the issue of whether the substance of a decision can be challenged on the basis of the mindset of those who participated in making it. The present case, on the other hand, concerns whether the decision is invalidated because a councillor did not participate on the basis of views he had expressed earlier. I do not consider what is said in *R (Lewis)* is relevant to the issue I have to determine.

[16] It may be that *R (Lewis)* was cited to address the issue of whether, apart from the Councillors' Code and the call from Mr Mahon, Councillor Edlin could not properly have participated in the decision. If this was the intention it must be borne in mind that the test adopted in *R (Lewis)* and *Amber Valley* for determining when a decision may be rendered invalid is different from that stated in the Councillors' Code. In paragraph 7.5 (e), (f) and (g), the latter imposes a much higher standard. These paragraphs require that a councillor should not express any view on or formulate conclusions in relation to an application prior to the meeting at which it is to be considered and should not express even any indicative or provisional views on it prior to that time. It is quite understandable that as part of promoting the highest standard in public life Parliament chose to impose standards that exceed those which have been formulated by the courts. This is presumably with the intention of increasing public confidence in decisions taken by local authorities in recognition of the breadth and importance of decisions that are entrusted to them. A high standard is appropriate. The fact that a decision in which Councillor Edlin participated would not of itself have been invalid at common law is not determinative of the issue of whether his participation would have constituted a breach of the Councillors' Code.

[17] The decision in *Mansell* also addresses issues that are different from those raised in this application. It concerned the issue of whether a report prepared by a council officer

to inform councillors of the issue for determination and the factors to take into account contained errors which vitiated their decision. The Court of Appeal said that it was only if the report contained an error which misdirected the councillors in a material way that the decision taken on the basis of it would be unlawful. I have recently considered this issue in *Allanvale Homes (Prestwick) Limited, Petitioners* [2026] CSOH 25. Here, however, there was no challenge to any report which led to the decision which is challenged and the petition expressly accepts that the advice given by Mr Mahon to Councillor Edlin was correct. The issue of errors in reports by councillors is not relevant to this decision.

[18] The principle that for a hearing to be fair a person must know the substance of the case against them which was articulated in *Kanda* is not relevant to this decision. Councillor Edlin had not been required to answer an allegation made against him. As is clear from his affidavit, he was made aware of a challenge that was to be made to his participation in a council meeting and was told that if he did participate, there was a possibility that there could be proceedings before the Standards Commission. Only at that later stage, if there had been a complaint made against him, would the principle from *Kanda* that he must be told of the allegation against him and given a fair opportunity to correct or contradict it apply. On the same basis, as no allegation against him was determined at any point, there was no breach of natural justice such as was considered in the case of *X, Petitioner*. Advising Councillor Edlin of the position and leaving it to him to determine whether or not to attend the meeting and vote does not constitute unfairness or a breach of the rules of natural justice.

[19] Although the petitioner accepts that the advice that Mr Mahon gave was correct, she does aver that it was incomplete. It is claimed that it was deficient in that Councillor Edlin was not told that he could seek to have the meeting adjourned/postponed. No authority

was cited to me to the effect that it is the duty of a monitoring officer to advise a councillor as to his options for the discharge of his functions. Guidance published by the Standards Commission in August 2024 entitled “Role of a Council Monitoring Officer” states

“While it is a councillor’s personal responsibility to ensure they comply with the provisions in the Code, Monitoring Officers can provide advice and support to councillors on how to interpret and apply its provisions. This means that Monitoring Officers may, on occasion, intervene and advise a councillor accordingly, if there are concerns that the councillor in question may have breached the Code or may be about to do so.”

It seems that this is what Mr Mahon did. The guidance makes no reference to a duty to advise councillors of their options. I do not consider that there is any such duty and there is no basis for describing the advice given as incomplete.

### **The challenges in the petition and conclusion**

[20] While I have considered above the authorities cited and arguments made at the hearing, it is appropriate to end by considering the contents of the petition. The petitioner’s averment that,

“If a councillor is advised that he or she cannot take part in a vote or is otherwise precluded from doing so, any decision made in his or her absence may amount to a decision arrived at in misdirection of law or on a procedurally irregular basis”

is nothing to the point. Councillor Edlin was not precluded from voting in any way and was not told that he could not take part in the vote. It was his own decision not to attend and vote. It is not accurate to present the situation as being that Councillor Edlin withdrew “under threat of penalty” or that he was “wrongfully prevented from participating in the meeting in relation to the Second Application under threat of professional disciplinary action and sanction”. These averments materially misrepresent the position.

Councillor Edlin was told that a complaint had been made and, having asked what might

happened if he attended the meeting, as he puts it in his affidavit, he says that he was told, "I could be involved with the Standard Commission" and the possible penalties were outlined. In no way is this equivalent to excluding him or precluding him from participation.

[21] Although the petitioner avers that Mr Mahon misdirected himself and therefore misdirected Councillor Edlin in relation to the allegation, that is inconsistent with the admission that none of the advice given to Councillor Edlin was wrong. Although it is alleged that Councillor Edlin was not given advice as to his options, as I note above, there was no duty on Mr Mahon to give such advice.

[22] In these circumstances I refuse the remedies sought and dismiss the petition.